24. **22.03.2022**
Ct. No.06
Tanmoy

C.R.C. 6 of 2018

Sri Murari Mohan Maity
-Versus-
Sri Ashis Dey & Ors.

With

IA No: C.A.N. 1 of 2016 (Old No: C.A.N. 9524 of 2016)
with
IA No: C.A.N. 2 of 2018 (Old No: C.A.N. 5817 of 2018)
With
IA No: C.A.N. 3 of 2018 (Old No: C.A.N. 5818 of 2018)
With
IA No: C.A.N. 4 of 2018 (Old No: C.A.N. 5819 of 2018)
With
IA No: C.A.N. 5 of 2018 (Old No: C.A.N. 5820 of 2018)
In
F.M.A. 3475 of 2014

Mr. Subrata Mukherjee, Adv.,

…for the petitioner/applicant.

Mr. Asok Kumar Jana, Adv.
Ms. Pampa Dey Dhabal, Adv.,
Mr. Krishna Deo Das, Adv.

…for the alleged contemnor nos. 1 to 4.

Mr. Rezaul Hossain, Adv.

…for the State.

It is no wonder that the appellant, who has received the retiral benefits for alleged thirty three years of service by serving only for three years, will insist on payment of provident fund dues on a misinterpretation of an order dated September 24, 2014, without depositing a single paisa in the provident fund account.

The appellant alleges violation of the order dated September 24, 2014, passed in M.A.T. 683 of 2014. The operative part of the order is quoted below:

> *"In the instant case admittedly the writ petitioner was appointed as a Headmaster in a Class-II Junior High School on 2nd January, 1969. Undisputedly he rendered his service in the said school till 29th September, 1973. Thereafter the writ petitioner claimed that due to resistance offered by the school authority he could not render his service in the said school since 29th September, 1973. Fact remains that his service was not terminated by the school authority. He attained the age of superannuation on 31st January, 2008. Since there is nothing on record to show that his service was terminated by the school authority, he should be deemed to have been in service till 31st January, 2008. As such his entitlement to pension and other retiral dues cannot be disputed.*
>
> *Fact remains that the concerned District Inspector of School admitted the writ petitioner's entitlement towards his retiral dues in his order dated 27th February, 2014 appearing at page 23 of the affidavit-in-opposition filed in connection with the appellant's application for condonation of delay. Pension payment order has also been issued from the office of the Director of the Pension, Provident Fund and Group Insurance. Copy of the pension payment order issued on 20th March, 2014 has been annexed to the said affidavit-in-opposition as Annexure-B thereto. From the said pension payment order it appears that a sum of Rs. 3,84,120/- (Three lakhs eighty-four thousand one hundred and twenty) only is payable to the writ petitioner on account of his death and retiral gratuity. It also*

> *appears from the said pension payment order that a sum of Rs. 1300/- is payable to him per month on account of pension with effect from 1st February, 2008.*
>
> *Considering this background, we direct the State-respondents to pay the gratuity admissible to him as per the said pension payment order and the entire arrear pension till the month of September, 2014 to the petitioner by 31st October, 2014. The concerned authority should also go on paying the pension from the current month, i.e., from October 2014 regularly.*
>
> *The School Authority is also directed to pay the provident fund dues to the petitioner by 31st October, 2014…"*

It is the grievance of the appellant before us that although in compliance with the order of the Division Bench, he is getting pension and the gratuity amount has also been released in his favour, but the provident fund dues as directed by the Division Bench on September 24, 2014, have not yet been released, and therefore, the respondents are in contempt of Court for violation of the said order dated September 24, 2014.

It has been strenuously argued before this Court that a contempt proceeding is in nature of an execution proceeding and therefore, there is no scope for going behind the order dated September 24, 2014, by which the respondents were directed to release the provident fund dues in a time-bound manner.

Since the matter relates to non-payment of retiral dues of a school teacher, a serious view was taken by this Court and the concerned District Inspector of Schools (S.E.) (in short, “D.I.”) was directed to file a report indicating the reason for non-payment of the appellant’s provident fund dues. In compliance with the said direction, the D.I. has filed a report. The appellant has also filed an affidavit taking exception to that report.

Let such affidavits and the written note of arguments filed on behalf of the applicant be kept with the records.

The factual backdrop in which the petitioner was given his retiral dues including his pension is quite interesting.

The appellant was appointed as an organizing Teacher with effect from January 1, 1968, in the concerned school. His appointment was approved with effect from January 2, 1970, by the concerned D.I. of Schools. He served in the school only till September 29, 1973, as an approved teacher. Thereafter he left the school and never joined his duty again. The school authority had sent some communications to him but he did not join his duty. He attained the age of retirement on January 31, 2008.

Thereafter he approached this Court claiming his post-retirement dues and other dues. A learned Single Judge of this Court directed the State to pay a consolidated sum of Rs. 20 lakh as his arrear salary.

The State challenged the said order before the appellate Court whereupon the above-quoted order was passed on September 24, 2014, modifying the order of the learned Single Judge.

The primary ground for passing the said order is quoted below:

> *"Since there is nothing on record to show that his service was terminated by the school authority, he should be deemed to have been in service till 31st January, 2008. As such his entitlement to pension and other retiral dues cannot be disputed."*

It appears that though the appellant served in the approved post only for about three years his pension and other retiral dues were released treating him to be in service till the date of his superannuation on January 31, 2008. His qualifying service was treated to be for a period of 33 years.

The appellant has not denied the aforesaid facts in his affidavit but it has only been suggested that he was prevented by the school authorities from joining his duty.

The report of the D.I. of Schools (S.E.) suggests that the school in question was a D.A.-getting-school up to February, 1979. The Grant-in-Aid scheme was introduced for the school only with effect from March, 1979, and as such there was no scope for depositing provident fund amount by an individual staff of the school at that time.

It further appears that the provident fund scheme was introduced in the school by the Finance Department of the State Government with effect from May 5, 1984.

The appellant never contributed any amount towards the provident fund account since he was not present in his duty after September 29, 1973.

This contempt application, therefore, appears to be unmeritorious. The Division Bench directed for payment of "the provident fund dues." The appellant never made any contribution towards his provident fund. In fact, there was no scheme for the provident fund in the school at the relevant point of time. Therefore, no amount was due to the appellant on account of provident fund and the grievance of the appellant for non-payment of his alleged provident fund dues is absolutely baseless.

The attempt of the appellant to enjoy unjust enrichment should not be entertained by the continuation of this contempt proceeding. The alleged contemnors have been unnecessarily harassed. Contempt Rules were also issued against them.

Accordingly, The C.R.C. 6 of 2018 stands dropped and disposed of with costs assessed at Rs.5,000/- (Rupees Five Thousand), which is to be paid to the

State Legal Aid Services Authority by the appellant within one month from date.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.) **(Arijit Banerjee, J.)**